

REMARKS

Applicants have carefully reviewed and considered the Office Action mailed on December 11, 2008, and the references cited therewith.

Claims 1, 27, 28, 29, and 30 are currently amended. Claims 2-5, 8-11, and 17-26 have been previously withdrawn. New claim 34 is currently added. As a result, claims 1-34 are now pending in this application. Applicants respectfully request reconsideration of the application.

Claim Rejections – 35 USC § 102

Joshi et al.

Claims 1, 6, 7, 12-16, and 27-30 were rejected under 35 USC § 102(b) as being anticipated by Joshi et al. (U.S. 6,109,539, hereinafter “Joshi”). Applicants respectfully traverse this rejection.

Independent claims 1 and 29 generally recite a device having means for imparting motion to a retaining means, and a motion mechanism, respectively. Similarly, claims 27 and 28 respectively recite methods involving imparting motion to a retaining member and porous pad. More specifically, claims 1, 27, 28, and 29 have been amended to recite some variation of an element requiring means for, or a method comprising, imparting motion to move the retaining means with respect to an ambient environment. Support for these amendments is found in the application. For example, the second paragraph of page 6 of the application provides an example in which “Vibrating elements are associated with at least the portion of wick 18 [and] exposed to the surrounding ambient air.” (*See also*, page 5, at paragraph 3 and Figures 1-7). By moving the retaining means with respect to the ambient environment, the claimed means for, and methods comprising, imparting motion provide advantages that are not found in Joshi. For example, this movement of the retaining means with respect to the ambient environment helps to increase the rate at which fluid is evaporated and dispersed to the surrounding environment. (*See* Page 6, at paragraph 2 and page 7, at second full paragraph).

The Office, however, has not properly shown that Joshi teaches or suggests the claimed means for, or methods comprising, imparting motion to the retaining means. Indeed, although on page 2 of the Office Action, the Office argues that Joshi *inherently* discloses imparting motion to the fluid retaining means, the Office has not shown that the mechanism in Joshi necessarily

imparts motion to a retaining means, as required MPEP 2112. (*See also In re Oelrich*, 666 F.2d 578, 581-82, 212 USPQ 323, 326 (CCPA 1981), stating “To establish inherency, the extrinsic evidence ‘must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.’”). Indeed, while the Office appears to equate the Joshi’s emanator pad 116 and gas generating cell 95 with the claimed means for retaining fluid and means for imparting motion, respectively, the Office has not pointed to any support showing that Joshi’s gas generating cell 95 necessarily imparts, or is even capable of imparting, motion to its emanatory pad 116. On the contrary, the skilled artisan will recognize that instead of imparting motion to the emanator pad 116, Joshi’s gas generating cell 95 simply emits gasses into the interior region 96 of Joshi’s housing 92 to break the pressure gradient created by the diffusion of volatile substance 91 through porous plug 93. (Col. 7, lines 44-61). In this manner, Joshi’s gas generating cell regulates the rate of diffusion of the volatile substance through the porous plug and allows the volatile substance to diffuse through porous plug 93 at a relatively uniform, linear, and constant rate. (Col. 7, lines 62-67). In addition to Joshi’s failure to teach all of the elements of the rejected claims, there is no apparent reason to modify Joshi to comprise the means for, or methods comprising, imparting motion, as claimed in amended claims 1, 27, 28, and 29.

With respect to claim 30, claim 30 generally recites a controlled-release fluid delivery device comprising a fluid retainer and a motion element. More specifically, claim 30 has been amended to recite that the motion element is in communication with the fluid retainer to rotate the fluid retainer. Support for this amendment is found in at least paragraph 5 of page 10 as well as Figure 7 of the application.

The Office, however, has not shown that Joshi teaches a motion element in communication with a fluid retainer to rotate the fluid retainer. Indeed, as discussed above, while Joshi teaches a gas generating cell 95, instead of imparting any motion to a fluid retainer, let alone rotating the fluid retainer, it appears that Joshi’s cell simply acts to “break the pressure gradient” within the housing in Joshi to control the rate at which the volatile substance diffuses

through Joshi's porous plug. (*See* Col. 7, line 44-67). Furthermore, there is no apparent reason to modify Joshi to include the claimed motion element to rotate the fluid retainer.

Because the Office has not shown that Joshi teaches each and every element of amended independent claims 1 and 27-30, either expressly or inherently, Applicants respectfully submit that claims 1 and 27-30 are patentable over Joshi. Claims 6, 7, and 12-16 depend from claim 1 and, at least because of that dependency, are also patentable over Joshi. Moreover, claims 6, 7, and 12-16 recite additional features that are not disclosed or rendered obvious by Joshi. Accordingly, Applicants respectfully request that this rejection be withdrawn.

Adams et al.

Claims 30-33 were rejected under 35 USC § 102(b) as being anticipated by Adams et al. (U.S. 6,938,883, hereinafter "Adams"). Nevertheless, the Office has not shown that Adams teaches each and every element of the amended claims.

Independent claim 30 generally recites a controlled-release fluid delivery device comprising a fluid retainer and a motion element. More specifically, as previously mentioned, claim 30 has been amended to recite that the motion element is in communication with the fluid retainer to rotate the fluid retainer. Support for this amendment is found in paragraph 5 of page 10 of the application. Additionally, Figure 7 illustrates a non-limiting example in which motion element 20 imparts rotational motion to a fluid retainer, such as porous pad 34.

Nevertheless, the Office has not shown that Adams teaches or suggests a motion element to rotate the fluid retainer. Instead, while not specifically arguing that Adams teaches a fluid retainer, the Office argues that Adams discloses a fluid delivery mechanism (wick 310) and a motion mechanism (fan 32). Because the Office equates Adams's fan 32 with the claimed motion element, Applicants assume that the Office equates Adams' wick 310 with the claimed fluid retainer. However, the Office has not shown Adams teaches a motion element in communication with Adams' wick 310 to rotate the wick 310. To the contrary, the skilled artisan will recognize that Adams teaches that its wick 310 is secured in the desired positioned by coupling the wick 310 to a dispenser housing 30 using any one of numerous methods of securement. (Col. 2: 40-43; *see also* Abstract). Moreover, there is no logical reason to modify Adams to cause its wick 310 to rotate.

Because the Office has not shown that Adams teaches each and every element of claim 30, Applicants respectfully submit that claim 30 is not anticipated by Adams. Claims 31 and 32 depend from claim 30 and, at least because of that dependency, are likewise patentable over Adams. Accordingly, Applicants respectfully request that this rejection be withdrawn.

Claim Rejections – 35 USC § 103

Claim 33 was rejected under 35 USC § 102(b) as being as being unpatentable over Adams in view of Glaser (U.S. 4,944,898). Applicants respectfully traverse this rejection.

As it depends from amended claim 30, claim 33 recites a controlled-release fluid delivery device comprising, among other things, (1) a housing having a fluid reservoir and at least one opening in the housing for enabling delivery of the fluid out of the reservoir and (2) a fluid retainer in fluid communication with the at least one opening, wherein the fluid retainer retains the fluid delivered out of the fluid reservoir and the fluid retainer is a coating on a blade in communication with a motor. (For support *see* Figure 7 and paragraph 5 on page 10 to paragraph 1 on page 11).

On page 3 of the Office action, the Office argues that Glaser teaches coating a fan blade with a material containing a volatile liquid to disperse the liquid vapor into the ambient environment. With this teaching, the Office further argues that it would have been obvious to the skilled artisan to have modified Adams to include a retaining material as a coating on the fan blade. However, because the Office has not shown that Adams or Glaser, either individually or in combination, teach or suggest all elements of claim 33, Applicants, respectfully submit that claim 33 would not have been obvious in light of Adams in view of Glaser.

Indeed, while claim 33 recites that the fluid retainer is in fluid communication with the at least one opening in the housing, the Office has not shown that Adams or Glaser teach such a feature. For instance, instead of having Adams' wick 310 in fluid communication with blades on Adams' fan 32, Adams teaches that its wick 310 is immersed into an air stream generated by the fan. (Col. 2: 65 – Col. 3: 1). In light of Adam's disclosure, the skilled artisan will understand that Adams' dispenser functions as the fan 32 blows air past the wick 310 and causes volatile liquid on the wick 310 to evaporate. (*See* Col. 2: 1-3, 21-25, & 45-48). Without fluid communication between a fluid retainer and Adams' fan blades, the skilled artisan would

understand that Adams' dispenser could not function as the device in claim 33, even if Adam's fan blades had a fluid retainer coating disposed thereon.

Because the Office has not shown that Adams or Glaser teach or suggest all elements of claim 33, Applicants respectfully request that this rejection be withdrawn.

New Claim

New claim 34 depends from amended claim 1. Claim 34 recites additional features that are not disclosed in or obviated by the cited prior art references. Specifically, claim 33 states that the means for imparting motion is selected from the group consisting of a piezoelectric device, an electric motor, a vibrating motor, a sonic wave producing device, and combinations thereof. However, the Office has not shown that the cited references teach such an element. For at least the aforementioned reasons, Applicants request favorable consideration of new claim 34.

Conclusion

Applicants respectfully submit that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicants' attorney (801-978-2186) to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 50-3586

Respectfully submitted,

ASHOK V. JOSHI ET AL.

By their Representatives,

Date 3/11/2009

By 

David B. Fonda
Reg. No. 39,672
801-978-2186